

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

TROY DEIMERLY,

Plaintiff,

v.

HAROLD W. CLARKE, *et al.*,

Defendants.

Case No. C06-5717 RJB/KLS

ORDER STRIKING PLAINTIFF'S  
AMENDED COMPLAINT

Before the Court is Plaintiff's Amended Complaint. (Dkt. # 35). For the reasons set forth below, the Court finds that the Amended Complaint should be stricken from the record.

**I. DISCUSSION**

On January 29, 2007, Plaintiff filed this civil rights action naming Harold W. Clarke, Belinda D. Stewart, Sgt. Sullivan and John & Jane Doe as Defendants. (Dkt. # 8). Plaintiff alleges that Defendants violated his Constitutional right of access of court by refusing to process his mail. (*Id.*).

Defendants filed their Answer to Plaintiff's Complaint on May 4, 2007. (Dkt. # 25). The Court entered its Pretrial Scheduling Order on May 10, 2007, ordering a discovery deadline of November 9, 2007, dispositive motions deadline of December 12, 2007 and joint status report deadline of April 11, 2008. (Dkt. # 27).

Plaintiff filed his Amended Complaint on August 13, 2007. (Dkt. # 35). Plaintiff did not seek leave prior to filing the amended complaint nor has written consent of the adverse party been

1 submitted to the Court.

## 2 II. DISCUSSION

3 Pursuant to Federal Rule of Civil Procedure ("Fed. R. Civ. P.") 15(a), "[a] party may amend  
4 the party's pleading once as a matter of course at any time before a responsive pleading is served."  
5 Otherwise, the party "may amend the party's pleading only by leave of court or by written consent of  
6 the adverse party." *Id.* Leave to amend "shall be freely given when justice so requires," and "this  
7 policy is to be applied with extreme liberality." *Id.*; *Morongo Band of Mission Indians v. Rose*, 893  
8 F.2d 1074, 1079 (9<sup>th</sup> Cir. 1990). After a responsive pleading has been filed, "leave to amend should  
9 be granted unless amendment would cause prejudice to the opposing party, is sought in bad faith, is  
10 futile, or creates undue delay." *Martinez v. Newport Beach City*, 125 F.3d 777, 786 (9<sup>th</sup> Cir. 1997).

11 Plaintiff did not seek leave to file an amended complaint nor has he submitted written  
12 consent of Defendants. Accordingly, Plaintiff's Amended Complaint (Dkt. # 35) shall be **Stricken**.  
13 Plaintiff is directed to file a motion seeking leave to amend his complaint or obtain the written  
14 consent of Defendants prior to submitting a proposed amended complaint for this Court's  
15 consideration.

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17 DATED this 17th day of September, 2007.

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20 Karen L. Strombom  
21 United States Magistrate Judge  
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